

**FILED**

**MAY 22 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ARACELY DE LA LUZ POLANCO-  
CHINCHILLA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-75270

Agency No. A29-135-265

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted May 15, 2006<sup>\*\*</sup>

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Aracely de la Luz Polanco-Chinchilla, a native and citizen of El Salvador,  
petitions for review of the Board of Immigration Appeals' order summarily  
affirming an immigration judge's ("IJ") order denying her motion to reconsider the

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

IJ's order denying her motion to reopen to apply for suspension of deportation under the Nicaraguan Adjustment and Central American Relief Act of 1997 ("NACARA"). We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion, *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005), and we grant the petition for review and remand.

At the time the IJ concluded that petitioner's motion to reopen was untimely she did not have the benefit of this court's decision in *Albillo-De Leon v. Gonzales*, 410 F.3d 1090, 1098 (9th Cir. 2005), which holds that the September 11, 1998, deadline for filing for NACARA relief is subject to equitable tolling. We therefore remand, consistent with *INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam), so that the agency can determine whether or not equitable tolling is appropriate in this case. Because we remand on this threshold issue we do not consider petitioner's contention that she is not barred, under *Ordonez v. INS*, 345 F.3d 777, 783-84 (9th Cir. 2003), from eligibility for NACARA benefits.

**PETITION FOR REVIEW GRANTED; REMANDED.**